class meets, and the work by sections will decrease the difficulty of getting the books of reference. It is to be hoped the Boston University will meet with all success in its new method.

MISCONDUCT OF A JUDGE — ITS INFLUENCE ON THE JURY. — The untamed State of Washington furnishes a rather amusing application of the constitutional provision prohibiting a judge from commenting on matters of fact to the jury. His honor passed his time in perusing a newspaper during the testimony of the defendant, and while the defendant's attorney was endeavoring to impeach the testimony of a witness for the prosecution the court exchanged smiles, pleasant observations, and candy with the said witness. This, the upper court not unreasonably holds, comes too near, especially in a capital case, to an intimation that the defendant's view of the matter was of small import, and the court ventures to hope that such an occasion for reversal will not very often arise.

PRIVILEGE OF WITNESSES IN FEDERAL COURTS. — In the April number of the REVIEW, Mr. Louis M. Greeley discussed the case of *Counselman* v. *Hitchcock*, which arose through the refusal of a witness, summoned in an investigation under the interstate commerce law, to answer certain questions, on the ground that he would criminate himself by so doing. The District and Circuit Courts for Northern Illinois ruled that the witness must answer, inasmuch as by Section 860 of the Revised Statutes the evidence could not be used against him in any criminal proceeding, and therefore his constitutional rights were not invaded. The question never having arisen in the Supreme Court, Mr. Greeley discusses it on principle. He says in substance that the fifth Amendment guarantees the privilege of a witness against compulsory, self-accusatory evidence; that this privilege may be abrogated by statute if the statute affords the witness complete amnesty as to the crime concerning which he was compelled to testify; but that Section 860 of the Revised Statutes does not do this, inasmuch as it does not prevent scources of evidence disclosed by his evidence from being used against him; the obvious conclusion being that under the present state of the law a witness may refuse to testify if his answer will tend to criminate himself.

It is interesting to note that the case has just been decided on appeal by the Supreme Court of the United States substantially in accordance with the principles above stated. The decisions of the District and Circuit Courts are reversed. The court says: "It is a reasonable construction, we think, of the constitutional provision [that "no person . . . shall be compelled in any criminal case to be a witness against himself"] that the witness is protected 'from being compelled to disclose the circumstances of his offence, the sources from which, or the means by which, evidence of its commission, or of his connection with it, may be obtained, or made effectual for his connection, without using his answers as direct admissions against him.'[1] It is quite clear that legislation cannot abridge a constitutional privilege, and that it cannot replace or supply one, at least unless it is so broad as to have the same extent in scope and effect. . . . In view of the constitu-

[1] *Emery's Case*, 107 Mass. 172, 182.